

Richard M. Heimann (State Bar No. 63607)  
rheimann@lchb.com  
Joy A. Kruse (State Bar No. 142799)  
jakruse@lchb.com  
Sharon M. Lee  
slee@lchb.com  
LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
Facsimile: 415.956.1008

*Counsel for the A-Power Investor Group and  
Proposed Lead Counsel for the Class*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RICK CHENG, Individually and on  
Behalf of All Others Similarly  
Situating,

Plaintiff,

v.

A-POWER ENERGY GENERATION  
SYSTEMS LTD, JINXIANG LU,  
MICHAEL ZHANG, ROBERT B.  
LECKIE, DILIP LIMAYE, REMO  
RICHLI, ZHENYU FAN, JIANMIN  
WU, KIN KWONG MAK and  
EDWARD MENG,

Defendants.

Civil No. 2:11-cv-5509-GW-CW

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION OF A-POWER INVESTOR  
GROUP FOR CONSOLIDATION OF  
ALL RELATED CASES,  
APPOINTMENT AS LEAD  
PLAINTIFF, AND APPROVAL OF  
LEAD COUNSEL

DATE: September 26, 2011  
TIME: 8:30 a.m.  
JUDGE: Honorable George H. Wu  
CTRM: 10

ALI ARAR, Individually and on  
Behalf of All Others Similarly  
Situating,

Plaintiff,

v.

A-POWER ENERGY GENERATION  
SYSTEMS LTD, JINXIANG LU,  
KIN KWONG MAK, JOHN S. LIN,  
EDWARD MENG, and MICHAEL  
ZHANG,

Defendants.

Civil No. 2:11-cv-05649-VBF-E

## TABLE OF CONTENTS

	<b>Page</b>
PRELIMINARY STATEMENT .....	1
INTRODUCTION .....	1
STATEMENT OF FACTS .....	2
ARGUMENT.....	4
I.    THE RELATED ACTIONS SHOULD BE CONSOLIDATED.....	4
II.   A-POWER INVESTOR GROUP SHOULD BE APPOINTED LEAD PLAINTIFF FOR THE CLASS.....	5
A.   A-Power Investor Group Is Willing to Serve as a Class Representative.....	6
B.   A-Power Investor Group Has the Largest Financial Interest in the Action .....	8
C.   A-Power Investor Group Satisfies the Requirements of Rule 23 of the Federal Rules of Civil Procedure.....	9
D.   A-Power Investor Group Fairly and Adequately Represents the Interests of the Class and Is Not Subject to Unique Defenses .....	11
III.  LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL SHOULD BE APPROVED .....	11
CONCLUSION.....	12

# TABLE OF AUTHORITIES

## Page

### Cases

<i>Aronson v. McKesson HBOC, Inc.</i> , 79 F. Supp. 2d 1146 (N.D. Cal. 1999) .....	5, 9
<i>Danis v. USN Communs., Inc.</i> , 189 F.R.D. 391 (N.D. Ill. 1999) .....	9
<i>Erikson v. Cornerstone Propane Partners LP</i> , No. 03-2522(MHP), 2003 U.S. Dist. LEXIS 18009 (N.D. Cal. Sept. 9, 2003) .....	6
<i>Fields v. Wolfson</i> , 41 F.R.D. 329 (S.D.N.Y. 1967) .....	5
<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497 (9th Cir. 1992) .....	10
<i>In re Gemstar-TV Guide Int'l. Sec. Litig.</i> , 209 F.R.D. 447 (C.D. Cal. 2002) .....	8
<i>In re McKesson HBOC, Inc. Sec. Litig.</i> , 97 F. Supp. 993 (N.D. Cal. 1999) .....	9
<i>In re Northern Dist. Of Cal., Dalkon Shield IUD Prod. Liab. Litig.</i> , 693 F.2d 847 (9th Cir. 1982) .....	10
<i>In re Olsten Corp. Sec. Litig.</i> , 3 F. Supp.2d 286 (E.D.N.Y. 1998) .....	9
<i>Lax v. First Merchants Acceptance Corp.</i> , Case No. 97 C 2715, 1997 U.S. Dist. LEXIS 11866 (N.D. Ill. Aug. 11, 1997) .....	9
<i>Lerwill v. Inflight Motion Pictures, Inc.</i> , 582 F.2d 507 (9th Cir. 1978) .....	10
<i>Osher v. Guess?, Inc.</i> , No. CV 01-00871 LGB, 2001 U.S. Dist. LEXIS 6057 (C.D. Cal. Apr. 26, 2001) .....	6, 11
<i>Riordan v. Smith Barney</i> , 113 F.R.D. 60 (N.D. Ill. 1986) .....	11
<i>Squyres v. Union Texas Petroleum Holdings, Inc.</i> , No. CV 98-6085-LGB, 1998 U.S. Dist. LEXIS 22945 (C.D. Cal. Nov. 2, 1998) .....	6
<i>Takeda v. Turbodyne Techs. Inc.</i> , 67 F.Supp.2d 1129 (C.D. Cal. 1999) .....	5, 10

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page</b>
<i>Tanne v. Autobytel, Inc.</i> , 226 F.R.D. 659 (C.D. Cal. 2005) .....	9
<i>Wenderhold v. Cylink Corp.</i> , 188 F.R.D.577 (N.D. Cal. 1999) .....	9

**Statutes**

15 U.S.C. § 78u-4 .....	passim
Fed. R. Civ. P. 23 .....	8, 9
Fed. R. Civ. P. 42 .....	4

## **PRELIMINARY STATEMENT**

William J. Rooney (“Rooney”), Matthew J. Sprunger (“Sprunger”), Dr. Terry W. Shaw (“Shaw”), Paolo Bechini (“Bechini”), and Robert C. Treadwell (“Treadwell”) (collectively the “A-Power Investor Group”) respectfully submit this Memorandum of Points and Authorities in support of their motion, pursuant to Section 21D(a)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) and Rule 42 of the Federal Rules of Civil Procedure, for an order: (i) consolidating all Related Actions pursuant to Rule 42(a) of the Federal Rules of Civil Procedure; (ii) appointing the A-Power Investor Group as Lead Plaintiff on behalf of all persons that purchased or otherwise acquired A-Power Energy Generation Systems Ltd. (“A-Power” or the “Company”) securities (the “Class”); (iii) approving A-Power Investor Group’s selection of Lief, Cabraser, Heimann & Bernstein, LLP (the “Lief Cabraser firm”) as Lead Counsel for the Class; and (iv) granting such other and further relief as the Court may deem just and proper.

## **INTRODUCTION**

The above-captioned actions<sup>1</sup> (the “Related Actions”) are securities class action lawsuits that have been brought against A-Power and certain officers

---

<sup>1</sup> They are entitled the following: *Cheng v. A-Power Energy Generation Systems Ltd.*, 11-cv-05509-GW-CW; and *Arar v. A-Power Energy Generation Systems Ltd.*, 11-cv-05649-VBF-E. The actions are on behalf of all persons who purchased or otherwise acquired A-Power between March 31, 2008 and June 27, 2011 (the “Class Period”).

Two actions have been filed in the District of Nevada. The actions are entitled: *Greenberg v. A-Power Energy Generation Systems Ltd.*, 11-cv-472-RCJ-RAM and *Gupta v. A-Power Energy Generation Systems Ltd.*, 11-cv-577-RCJ-VPC. These actions are on behalf of all persons who purchased or otherwise acquired A-Power between August 27, 2009 and June 27, 2011.

One action has been filed in the Southern District of New York. The action is entitled: *Weinberg v. A-Power Energy Generation Systems, Ltd.*, 11 Civ. 6006-JSR. The action is on behalf of all persons who purchased or otherwise acquired A-Power between March 31, 2008 and June 27, 2011.

The A-Power Investor Group is also filing a motion in the D. Nev. actions for consolidation of those actions and appointment as lead plaintiff and filing a motion in the S.D.N.Y. action for appointment of lead plaintiff. Ultimately, the D. Nev., S.D.N.Y. and these actions should be consolidated in one forum.

1 alleging violations of federal securities laws. Each raise substantially similar  
2 allegations: that defendants violated Sections 10(b) and 20(a) of the Exchange Act  
3 by issuing false and misleading financial statements during the Class Period.

4 Pursuant to the PSLRA, the court appoints as lead plaintiff the movant who  
5 possesses the largest financial interest in the outcome of the Action and who  
6 satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. 15  
7 U.S.C. § 78u-4(a)(3)(B)(iii)(I). The A-Power Investor Group, with approximate  
8 losses of \$876,257 in connection with its purchases of A-Power securities during  
9 the Class Period, is adequate and typical to serve as lead plaintiff. The A-Power  
10 Investor Group believes that it is the “most adequate plaintiff” as defined by the  
11 PSLRA and should be appointed Lead Plaintiff for these actions. The A-Power  
12 Investor Group has the largest financial interest in the relief sought in these actions  
13 by virtue of its substantial investment in A-Power securities during the Class Period  
14 and the losses it suffered as a result of Defendants’ misconduct. The A-Power  
15 Investor Group further satisfies the requirements of Rule 23 of the Federal Rules of  
16 Civil Procedure as an adequate representative with claims typical of the other Class  
17 members. Accordingly, the A-Power Investor Group respectfully submits that it  
18 should be appointed Lead Plaintiff.

### 19 **STATEMENT OF FACTS**

20 A-Power is a renewable energy company in China engaged in providing  
21 onsite distributed power generation systems and micro power grids for industrial  
22 companies. It is engaged in designing, constructing, installing and testing  
23 distributed power generation and micro power grids as stand-alone facilities and for  
24 various customers in the steel, chemical, ethanol, cement, and food industries. The  
25 Company designs projects, subcontracts its construction and installation to  
26 approved third-party subcontractors under its project oversight, and conducts  
27 testing on completed projects prior to turning them over to our customers. In  
28 addition to distributed power generation systems, the Company also designs,

1 installs and constructs related facilities for industrial companies.

2 Throughout the Class Period, Defendants made false and/or misleading  
3 statements, as well as failed to disclose material adverse facts about the Company's  
4 business, operations, and prospects. Specifically, Defendants made false and/or  
5 misleading statements and/or failed to disclose that: (1) the Company improperly  
6 accounted for its related-party transactions such that its financial statements were  
7 presented in violation of Generally Accepted Accounting Principles ("GAAP"); (2)  
8 the Company's revenues and income were misstated in violation of GAAP; (3) the  
9 Company's revenue and income reported in its filings with the SEC were overstated  
10 as the Company reported materially lower revenue and net income in its filings with  
11 the Chinese State Administration for Industry and Commerce ("SAIC"); (4) the  
12 Company lacked adequate internal and financial controls; and (5) as a result of the  
13 foregoing, the Company's financial results were materially false and misleading at  
14 all relevant times.

15 On June 17, 2011, A-Power announced that an independent director had  
16 resigned from the Company's Board of Directors as a result of concerns that his  
17 views on process and best practices were not necessarily shared throughout the  
18 Company." Later in the day, *Seeking Alpha* raised a number of red flags indicating  
19 fraud at the Company, including allegations that the 2009 financial statements filed  
20 by A-Power with the SAIC showed less than one-tenth of the revenue and cash  
21 balances than reported in statements filed with the SEC. On this news, A-Power  
22 stock fell \$0.51 per share or more than 22% in two consecutive trading sessions, to  
23 close at \$1.74 per share on June 20, 2011.

24 On June 27, 2011, A-Power announced that its independent auditor, MSCM  
25 LLP, had resigned effective June 26, 2011, and that its end-of-year 2010 Form 20-F  
26 filing would be delayed. Trading of the Company's shares was halted at \$2.67 per  
27 share on the same day by NASDAQ, until the Company could provide "additional  
28 information."

1 On June 28, 2011, the Company announced that the Chairs of its Board of  
2 Director's audit and compensation committees had resigned effective June 27,  
3 2011.

4 On July 1, 2011, the Company announced that another independent director  
5 had resigned from the Company's Board.

## 6 **ARGUMENT**

### 7 **I. THE RELATED ACTIONS SHOULD BE CONSOLIDATED**

8 On July 2, 2011, the first of the two above-captioned actions against A-  
9 Power was filed in the Central District of California. These Related Actions allege  
10 the same factual events and name the same core defendants. Further, the  
11 complaints allege similar legal bases for their claims: Sections 10(b) and 20(a) of  
12 the Exchange Act. In sum, the Related Actions involve common questions of fact  
13 and law. Accordingly, pursuant to Fed. R. Civ. P. 42(a), the Related Actions may  
14 be consolidated for all purposes.

15 Consolidation of related cases is proper where, as here, the actions involve  
16 common questions of law and fact such that consolidation would prevent  
17 unnecessary cost or delay in adjudication:

18 When actions involving a common question of law or fact are pending  
19 before the court, it may order a joint hearing or trial of any or all of the  
20 matters in issue in the actions; it may order all the actions  
21 consolidated; and it may make such orders concerning proceedings  
22 therein as may tend to avoid unnecessary costs or delays.

23 Fed. R. Civ. P. 42(a). *See also Manual for Complex Litig. (3d)*, 20.123, at 13-14  
24 (1995).

25 The PSLRA contemplates consolidation where "more than one action on  
26 behalf of a class asserting substantially the same claim or claims arising under this  
27 chapter has been filed," *see* 15 U.S.C. 78u-4(a)(3)(A)(ii), and did not displace the  
28 traditional legal standards for consolidation under Fed. R. Civ. P. 42(a). *Aronson v.*



1 *McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1150-51 (N.D. Cal. 1999). Under the  
 2 traditional principles of consolidation, complaints may be consolidated regardless  
 3 of whether the individual claims or causes of action are identical. As such, one  
 4 court has recently noted, “neither Rule 42 nor the PSLRA demands that the actions  
 5 be identical.” *Takeda v. Turbodyne Techs. Inc.*, 67 F.Supp.2d 1129, 1133 (C.D. Cal.  
 6 1999). Indeed, it has long been routine in federal securities actions to consolidate  
 7 such actions, and considered prejudicial to defendants not to do so. *See, e.g., Fields*  
 8 *v. Wolfson*, 41 F.R.D. 329, 330 (S.D.N.Y. 1967).

9 As noted above, here, the allegations in the Related Actions are based on the  
 10 same underlying facts and events, which occurred during the same time period, and  
 11 charge the same core defendants with violations of the federal securities laws.

12 The consolidation of these actions will expedite pretrial proceedings, reduce  
 13 duplication, avoid contacting of parties and witnesses for inquiries in multiple  
 14 proceedings and minimize the expenditure of time and money by all persons  
 15 concerned. Moreover, consolidation will reduce the confusion and delay that may  
 16 result from prosecuting these related class actions separately. Further, the  
 17 defendants have not stated any prejudice that they would suffer as a result of  
 18 consolidation of these actions. Thus, the motion by the A-Power Investor Group to  
 19 consolidate the Related Actions should be granted.

## 20 **II. A-POWER INVESTOR GROUP SHOULD BE APPOINTED LEAD** 21 **PLAINTIFF FOR THE CLASS**

22 Section 21D(a)(3)(B) of the PSLRA sets forth procedures for the selection of  
 23 Lead Plaintiffs in class actions brought under the Exchange Act. The PSLRA  
 24 directs courts to consider any motion to serve as Lead Plaintiff filed by class  
 25 members in response to a published notice of class action by the later of (i) 90 days  
 26 after the date of publication, or (ii) as soon as practicable after the Court decides  
 27 any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B)(i) and (ii).

28 Further, under 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I), the Court is directed to

1 consider all motions by plaintiffs or purported class members to appoint lead  
 2 plaintiffs filed in response to any such notice. Under this section, the Court “shall”  
 3 appoint “the presumptively most adequate plaintiff” to serve as lead plaintiff and  
 4 shall presume that plaintiff is the person or group of persons, that:

5 (aa) has either filed the complaint or made a motion in response to a  
 6 notice . . .;

7 (bb) in the determination of the Court, has the largest financial  
 8 interest in the relief sought by the class; and

9 (cc) otherwise satisfies the requirements of Rule 23 of the Federal  
 10 Rules of Civil Procedure.

11 *See Erikson v. Cornerstone Propane Partners LP*, No. 03-2522(MHP), 2003 U.S.  
 12 Dist. LEXIS 18009, at \*8-\*9 (N.D. Cal. Sept. 9, 2003); *Squyres v. Union Texas*  
 13 *Petroleum Holdings, Inc.*, No. CV 98-6085-LGB, 1998 U.S. Dist. LEXIS 22945, at  
 14 \*5 (C.D. Cal. Nov. 2, 1998); *Osher v. Guess?, Inc.*, No. CV 01-00871 LGB, 2001  
 15 U.S. Dist. LEXIS 6057, at \*11 (C.D. Cal. Apr. 26, 2001).

16 As set forth below, the A-Power Investor Group satisfies all three of these  
 17 criteria and thus is entitled to the presumption that it is the most adequate plaintiff  
 18 of the Class and, therefore, should be appointed Lead Plaintiff for the Class.

19 **A. A-Power Investor Group Is Willing to Serve as a Class**  
 20 **Representative**

21 On July 2, 2011, counsel in the first filed action entitled action *Cheng v. A-*  
 22 *Power Energy Generation Systems Ltd.*, 11-cv-05509-GW-CW, caused a notice to  
 23 be published pursuant to Section 21D(a)(3)(A)(i) of the PSLRA announcing that a  
 24 securities class action had been filed against the defendants herein, and that  
 25 investors of A-Power securities had until August 30, 2011<sup>2</sup>, to file a motion to be  
 26

27 <sup>2</sup> The press release erroneously calculated the deadline to file a motion to be appointed as Lead  
 28 Plaintiff. The correct deadline is August 31, 2011 as it is sixty days from the notice dated July  
 2, 2011.

1 appointed as Lead Plaintiff. *See* Kruse Decl., Exhibit A.<sup>3</sup>

2 The A-Power Investor Group has filed the instant motion pursuant to the  
3 Notice and has attached Certifications attesting that it is willing to serve as a Lead  
4 Plaintiff for the Class and is willing to provide testimony at depositions and trial, if  
5 necessary. *See* Kruse Decl., Exhibit B. Accordingly, the A-Power Investor Group  
6 satisfies the first requirement to serve as Lead Plaintiff for the Class

7 Contemporaneously with this filing, A-Power Investor Group members  
8 Messrs. Rooney, Sprunger, Shaw, Bechini and Treadwell have submitted a Joint  
9 Declaration, demonstrating that each of them is knowledgeable about this litigation;  
10 they are actively working together, and are committed to protecting the interests of  
11 the Class. *See* Joint Decl. of William J. Rooney, Dr. Terry W. Shaw, Paolo  
12 Bechini, Robert C. Treadwell, Jr., And Matthew J. Sprunger for Consolidation of  
13 Related Actions, Appointment as Lead Plaintiff And Approval of Lead Counsel  
14 (“Joint Decl.”), attached as Exhibit D to the Kruse Decl. They have “knowledge of  
15 the requirements and responsibilities of a lead plaintiff in a securities class action  
16 governed by the PSLRA.” Joint Decl. ¶ 2. They understand that it is their  
17 “responsibility to keep informed regarding the status and progress of this action, the  
18 strengths and weaknesses of the case, and any prospects for resolution of this  
19 matter.” *Id.*

20 Further, in consultation with their counsel, they have “agreed to proceed  
21 together.” *Id.* ¶ 6. In addition, they have expressed an intention to “meet  
22 telephonically at least quarterly amongst ourselves and Lead Counsel for case status  
23 updates.” *Id.* ¶ 3. Also, they will consult with each other, and with their “counsel  
24 in advance of major litigation events, such as important motions, settlement  
25 discussions, trial preparation and trial, and shall have the authority and  
26 responsibility to direct counsel with respect to each of these events after receiving

---

27  
28 <sup>3</sup> “Kruse Decl.” refers to the Declaration of Joy A. Kruse, submitted herewith in support of the motion of the A-Power Investor Group.

the benefit of Lead Counsel's advice." *Id.* Thus, members of the A-Power Investor Group have made a proper evidentiary showing of their ability to work cohesively and to serve as Lead Plaintiff.

**B. A-Power Investor Group Has the Largest Financial Interest in the Action**

As noted above, the PSLRA establishes a rebuttable presumption that the most adequate plaintiff is the "person" or "group of persons" who "has the largest financial interest in the relief sought by the class," and who also satisfies the requirements of Fed. R. Civ. P. 23. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). This presumption can only be rebutted by proof that the presumptively most adequate plaintiff "will not fairly and adequately protect the interests of the class" or is "subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II). *In re Gemstar-TV Guide Int'l. Sec. Litig.*, 209 F.R.D. 447, 450 (C.D. Cal. 2002).

As of the time of the filing of this motion, the A-Power Investor Group believes that it has the largest financial interest of anyone in the relief sought by the Class.

Movant	Shares Purchased	Costs	Retained Shares	Approximate Loss
Rooney	48,917	\$839,658	26,717	\$411,212
Sprunger	75,100	\$666,623	25,330	\$151,896
Shaw	12,039	\$139,633	11,509	\$133,394
Bechini	15,000	\$114,115	15,000	\$114,115
Treadwell	10,000	\$65,640	10,000	\$65,640
<b>Total</b>	<b>161,056</b>	<b>\$1,825,668</b>	<b>88,556</b>	<b>\$876,257</b>

In total, the A-Power Investor Group suffered losses of approximately \$876,257.

1 See Kruse Decl., Exhibit C. Because the A-Power Investor Group possesses the  
 2 largest financial interest in the outcome of this litigation, it may be presumed to be  
 3 the “most adequate” plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). *See also In re*  
 4 *McKesson HBOC, Inc. Sec. Litig.*, 97 F. Supp. 2d. 993 (N.D. Cal. 1999)  
 5 (determining movants’ financial interest based on number of shares purchased  
 6 during the class period, net shares purchased during the class period, net funds  
 7 expended during the class period, and approximate loss); *In re Olsten Corp. Sec.*  
 8 *Litig.*, 3 F. Supp. 2d 286, 296 (E.D.N.Y. 1998) (same); *Lax v. First Merchants*  
 9 *Acceptance Corp.*, Case No. 97 C 2715, 1997 U.S. Dist. LEXIS 11866, at \*5 (N.D.  
 10 Ill. Aug. 11, 1997) (same).

11 C. **A-Power Investor Group Satisfies the Requirements of Rule 23 of**  
 12 **the Federal Rules of Civil Procedure**

13 The PSLRA requires that the lead plaintiff must satisfy the requirements of  
 14 Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-  
 15 (a)(3)(B)(iii)(I)(cc). With respect to the claims of class representatives, Rule 23(a)  
 16 requires that (1) the class is so numerous that joinder of all members is  
 17 impracticable; (2) there are questions of law or fact common to the class; (3) such  
 18 claims are typical of those of the class; and (4) the representatives will fairly and  
 19 adequately protect the interests of the class. For purposes of a motion to appoint  
 20 lead plaintiff pursuant to the PSLRA, however, all that is required is a “preliminary  
 21 showing” that the lead plaintiff’s claims are typical and adequate. *Aronson*, 79 F.  
 22 Supp. 2d at 1158 (citing *Wenderhold v. Cylink Corp.*, 188 F.R.D.577, 587 (N.D.  
 23 Cal. 1999)). *See Tanne v. Autobyte, Inc.*, 226 F.R.D. 659, 666 (C.D. Cal. 2005).

24 The typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied where the  
 25 named representative’s claims have the “same essential characteristics as the claims  
 26 of the class at large.” *Danis v. USN Communs., Inc.*, 189 F.R.D. 391, 395 (N.D. Ill.  
 27 1999). “A class is typical if it arises from the same event or course of conduct that  
 28 gives rise to claims of other class members and all claims are based on the same

1 legal theory.” *Id.* Indeed, the “similarity of legal theory may control even where  
2 factual distinctions exist between the claims of the named representatives and the  
3 other class members.” *Id.* See *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508  
4 (9th Cir. 1992) (The typicality requirement serves to “assure that the interest of the  
5 named representative aligns with the interests of the class.”) (citation omitted).

6 The A-Power Investor Group’s claims are typical of those of the Class. It  
7 alleges, as do all class members, that defendants violated the Exchange Act by  
8 making what they knew or should have known were false or misleading statements  
9 of material facts concerning A-Power, or omitted to state material facts necessary to  
10 make the statements they did make not misleading. The A-Power Investor Group,  
11 as did all members of the Class, purchased A-Power securities during the Class  
12 Period at prices artificially inflated by defendants’ misrepresentations or omissions  
13 and was damaged upon the disclosure of those misrepresentations and/or omissions.  
14 These shared claims, which are based on the same legal theory and arise from the  
15 same events and course of conduct as the class claims, satisfy the typicality  
16 requirement of Rule 23(a)(3).

17 The adequacy of representation requirement of Rule 23(a)(4) is satisfied  
18 where it is established that a representative party “will fairly and adequately protect  
19 the interests of the class.” Accordingly,

20 The Ninth Circuit has held that representation is “adequate” when  
21 counsel for the class is qualified and competent, the representative’s  
22 interests are not antagonistic to the interests of absent class members,  
23 and it is unlikely that the action is collusive.

24 *Takeda*, 67 F. Supp. 2d at 1137 (citing *In re Northern Dist. Of Cal., Dalkon Shield*  
25 *IUD Prod. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982)). Accord *Lerwill v.*  
26 *Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). The class  
27 representative must also have “sufficient interest in the outcome of the case to  
28 ensure vigorous advocacy.” *Takeda*, 67 F. Supp. 2d at 1137 (citing *Riordan v.*

1 *Smith Barney*, 113 F.R.D. 60, 64 (N.D. Ill. 1986)).

2 The A-Power Investor Group is an adequate representative for the Class.  
 3 There is no antagonism between its interests and those of the Class and its loss  
 4 demonstrates that it has a sufficient interest in the outcome of this litigation.  
 5 Moreover, it has retained counsel highly experienced in prosecuting securities class  
 6 actions such as this action, and submits its choice to the Court for approval pursuant  
 7 to 15 U.S.C. § 78u-4(a)(3)(B)(v).

8 **D. A-Power Investor Group Fairly and Adequately Represents the**  
 9 **Interests of the Class and Is Not Subject to Unique Defenses**

10 The presumption in favor of appointing the A-Power Investor Group as Lead  
 11 Plaintiff may be rebutted only upon proof “by a purported member of the plaintiffs’  
 12 class” that the presumptively most adequate plaintiff:

- 13 (aa) will not fairly and adequately protect the interest of the class; or
- 14 (bb) is subject to unique defenses that render such plaintiff incapable  
 15 of adequately representing the class.

16 15 U.S.C. § 78u-4(a)(3)(b)(iii)(I).

17 The A-Power Investor Group’s ability and desire to fairly and adequately  
 18 represent the Class have been discussed above. The A-Power Investor Group is not  
 19 aware of any unique defenses Defendants could raise that would render it  
 20 inadequate to represent the Class. Thus, the A-Power Investor Group should be  
 21 appointed Lead Plaintiff for the Class.

22 **III. LEAD PLAINTIFF’S SELECTION OF LEAD COUNSEL SHOULD**  
 23 **BE APPROVED**

24 The PSLRA vests authority in the lead plaintiff to select lead counsel, subject  
 25 to approval by the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v); *Osher*, 2001 U.S. Dist.  
 26 LEXIS 6057, at \*15. The Court should only interfere with lead plaintiff’s selection  
 27 when necessary “to protect the interests of the class.” 15 U.S.C. § 78u-  
 28 4(a)(3)(B)(iii)(II)(aa).



1 Here, the A-Power Investor Group has selected the Lief Cabraser firm to  
 2 serve as Lead Counsel for the Class. As detailed in its firm resume (*see* Kruse  
 3 Decl., Exhibit E), the Lief Cabraser firm has extensive expertise and experience in  
 4 the field of securities litigation and have successfully prosecuted numerous  
 5 securities fraud class actions and obtained excellent recoveries on behalf of  
 6 defrauded investors. Thus, the Court may be confident that the Class will receive  
 7 the highest caliber of legal representation.

### 8 **CONCLUSION**

9 WHEREFORE, the A-Power Investor Group respectfully requests that the  
 10 Court issue an order: (1) consolidating the related actions; (2) appointing the A-  
 11 Power Investor Group as Lead Plaintiff for the Class; (3) approving the A-Power  
 12 Investor Group's selection of Lead Counsel for the Class; and (4) granting such  
 13 other and further relief as the Court may deem just and proper.

14 Dated: August 31, 2011

Respectfully submitted,

15 LIEFF, CABRASER, HEIMANN &  
 16 BERNSTEIN, LLP

17 By: /s/ Joy A. Kruse  
 18 Joy A. Kruse

19 Richard M. Heimann (State Bar No. 063607)  
 20 Joy A. Kruse (State Bar No. 142799)  
 21 Sharon M. Lee  
 22 275 Battery Street, 29th Floor  
 23 San Francisco, CA 94111-3339  
 24 Telephone: (415) 956-1000  
 25 Facsimile: (415) 956-1008

26 *Counsel for A-Power Investor Group and*  
 27 *Proposed Lead Counsel for the Class*  
 28